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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/695,526  | 10/24/2000  | Rehan M. Khan        | 03449.000023        | 3418             |
| 5514  | 7590        | 12/24/2008           | EXAMINER            |                  |
| FITZPATRICK CELLA HARPER & SCINTO<br>30 ROCKEFELLER PLAZA<br>NEW YORK, NY 10112 |             | KAZIMI, HANI M       |                     |                  |
|   |             | ART UNIT             |                     | PAPER NUMBER     |
|   |             | 3691                 |                     |                  |
|   |             | MAIL DATE            |                     | DELIVERY MODE    |
|   |             | 12/24/2008           |                     | PAPER            |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/695,526             | KHAN ET AL.         |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Hani Kazimi            | 3691                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 June 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5,8-10 and 12-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5,8-10 and 12-23 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

1. This communication is in response to Applicant's amendment filed on June 18, 2008. The rejections cited are as stated below:

### ***Response to Applicant's amendment***

2. Applicants' amendment filed on June 18, 2008 have been fully considered, and discussed in the next section below or within the following rejections are not deemed to be persuasive. Applicants' request for allowance is respectfully denied.

### ***Information Disclosure Statement***

3. The information disclosure statement (IDS) submitted on November 29, 2007 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner and attached to this office action.

### ***Claim Rejections – 35 U.S.C. 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 148 USPQ 459, that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or unobviousness.
4. Claims 1-5, 8-10 and 12-23 are rejected under 35 U.S.C. 103(a) as being obvious over Kaplan US Patent No. 5,963,916 in view of Murphy US Patent No. 7324953 B1.

Claims 1-5, 8-10 and 12-23, Kaplan discloses a computer implemented method for providing user requested music comprising the steps of; receiving a search query defining a plurality of music search parameters including at least one attribute corresponding to an emotional quality, situational quality, sound quality of the user and mood describing of music content (column 14, lines 1-15), searching for music samples based upon the search query, presenting via the interface the one or more music samples to the user based upon the search query, determining if the user wants to buy any of the music content associated with any of the presented music samples, determining if the user wants to sample another set of music samples similar to the music purchased, and determining if the user wants another set of music samples that is different than the purchased music (abstract, column 8, lines 33-67, and column 13, line 31 thru column 17, line 62).

Kaplan fails to teach that the at least one search attributes being assigned to one or more respective music samples based on a plurality of responses from a plurality of listeners to a plurality of questions.

However, Murphy teaches that the at least one search attributes being assigned to one or more respective music samples based on a plurality of responses from a plurality of listeners to a plurality of questions (columns 4 and 9, thru 12).

Therefore, it would have been obvious to one of ordinary skilled in the art at the time the Applicant's invention was made to modify the teachings of Kaplan to include that the at least one search attributes being assigned to one or more respective music samples based on a plurality of responses from a plurality of listeners to a plurality of questions, one of ordinary skilled in the art would be motivated to do so, because it provides convenience to the user, and it greatly improves the efficiency of the system.

### ***Response to Arguments***

5. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. However, in response to Applicant argument that Kaplan does not discloses a method of classifying music by "emotional quality," situation quality," "sound quality," and "vocal quality". Examiner directs Applicant's attention to figures 5, 6, 11, 12 and 21-27 and their related text).

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP ' 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hani Kazimi whose telephone number is (571) 272-6745. The examiner can normally be reached Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-2 17-9197 (toll-free).

/Hani M. Kazimi/

Primary Examiner, Art Unit 3691